

News Release



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Tennessee Corporation and Former Executives Sued Over Improper Purchase of Company Stock for Retirement Plan

ATLANTA, Ga. -- The U.S. Department of Labor has sued Elk Valley Professional Affiliates, Inc. (EVPA) of Fayetteville, Tenn. and its former corporate executives for imprudently using \$1,075,892.42 of the assets of the employee stock ownership plan to purchase company stock at prices in excess of fair market value and to pay expenses related to the sale of the company.

"Trustees of employee pension and benefit plans must realize that the law requires them to deal with plan assets in a careful and prudent manner," said Howard Marsh, director of the Atlanta regional office of the Employee Benefits Security Administration (EBSA), which investigated the case.

The suit, filed April 18, alleges that former EVPA president Mark Waters and former plan fiduciary David Groce violated the Employee Retirement Income Security Act (ERISA) by using \$980,034 in plan assets to purchase EVPA stock between November 1995 and May 1996. Waters and Groce both served on the ESOP's administrative committee. The suit also alleges that the fiduciaries improperly secured an ESOP loan with a \$553,500 Certificate of Deposit owned by the plan and improperly used the CD to pay off the loan. The fiduciaries allegedly used plan assets to pay \$95,498.42 in closing expenses to Telesis, a broker Waters hired to find a buyer for EVPA, and failed to maintain a fidelity bond to protect the plan against losses as required by law.

EVPA, which was purchased by Deaconess HomeCare, Inc. in December 1996, operates home health care agencies and home medical equipment facilities in Tennessee, northern Alabama and Mississippi. The suit seeks to permanently bar Waters and Groce from serving as fiduciaries or service providers to plans subject to ERISA, and require them to restore to the plan all losses with interest resulting from their improper actions.

Employers with similar problems, who are not yet the subject of an investigation, may be eligible to participate in the department's Voluntary Fiduciary Correction Program (VFCP). Participation in the VFCP requires employers to make workers whole but allows them to avoid EBSA enforcement actions and civil penalties as well as applicable excise taxes. For information about the VFCP see www.dol.gov/ebsa

The suit was filed in federal district court in Winchester. Employers and workers can reach EBSA's Atlanta regional office at 404-562-2156 or through its toll-free number, 1-866-444-EBSA (3272), for help with problems relating to private-sector pension and health plans.

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Chao v. Elk Valley Professional Affiliates, Inc.
Civil Action No. 4:03-CV-17